IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.4040 OF 2003

Ramesh Sakharam Mali and Anr. ..Petitioners

Vs.

Smt.Tarabai Pandurang Sarnaubat ..Respondent

....

Mrs.Gauri Godse for Petitioners

....

CORAM : B.H.MARLAPALLE,J.
DATE : MARCH 7,2005

P.C.:

1. Heard Mrs.Godse, the learned counsel for the petitioners who are plaintiffs in R.C.S.No. 11 of 1990. They had moved an application at Exh.64 on or about 1.10.1994 and the same was rejected by the impugned order dated 6.1.1995 passed by the learned C.J.J.D. at Murbad.

2. By the said application, the petitioners had prayed for the appointment of T.I.L.R. as the Court Commissioner to measure the suit property including its boundaries. The earlier application at Exh.36 was filed and decided. One Mr.Gaikar and a member of the Bar submitted his report but the present petitioners while appointing the Court Commissioner

pursuant to the application at Exh.36 did not raise any contentions that the measurements were required to be taken by a T.I.L.R. and not by any other Court Commissioner. The suit was already four years old and was ready for hearing right from 22.4.1991. The application at Exh.64 was placed and filed regardless to the earlier Court Commissioner's report at Exh.46. The trial Court therefore, expressed its doubt as to whether the plaintiff was trying to delay the trial of the suit.

3. The suit has been pending for almost 15 years by now and the Court Commissioner's report is already on record. A perusal of the same indicates that it shows the measurement of the suit property and it is not known whether the plaintiffs have filed any say on the said report either disputing or pointing out any deficiencies therein. Under such circumstances, the order passed by the Court below, cannot be held to be perverse or calling for interference in this petition under Article 227 of the Constitution of India.

4. The petition is rejected summarily. Ad-interim order stands vacated. Trial of the suit is expedited.

[B.H.MARLAPALLE,J.]